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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MICROSOFT CORPORATION, a Washington
9 corporation,

10 Plaintiff,

11 v.

12 THE SOFTWARE KING, an unknown business
13 entity, et al.

14 Defendants.

No. 2:16-cv-01899-RSM

STIPULATED PROTECTIVE ORDER

15 **1. PURPOSES AND LIMITATIONS**

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties
18 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.

19 The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
20 blanket protection on all disclosures or responses to discovery; the protection it affords from
21 public disclosure and use extends only to the limited information or items that are entitled to
22 confidential treatment under the applicable legal principles, and it does not presumptively
23 entitle parties to file confidential information under seal.

24 **2. “CONFIDENTIAL” MATERIAL**

25 “Confidential” material shall include information contained or disclosed in any
26 materials, including documents or portions thereof; interrogatories, requests for admission,
27 requests for production of documents, and answers and responses thereto; deposition testimony

1 and transcripts; and any tangible things that a party believes is confidential and should be
2 designated as "CONFIDENTIAL." Material so designated may include the following
3 categories of information:

- 4 (a) data about software activation attempts ("cyberforensic data");
- 5 (b) a party's process for collection, analysis, and use of cyberforensic data;
- 6 (c) Microsoft's purchase through outside investigators of computer systems and
7 equipment from Defendants, and Microsoft's analysis of those systems and equipment;
- 8 (d) the source of product keys sold by Defendants, and any investigations related
9 thereto;
- 10 (e) confidential pricing and availability information of Microsoft products;
- 11 (f) contracts and license agreements between third parties and Microsoft or any
12 Defendant;
- 13 (g) the name, address, and/or contact information of Defendants' customers;
- 14 (h) Defendants' revenue, costs, income, or profitability; and
- 15 (i) Defendants' pricing of services, software, or hardware.

16 **3. SCOPE**

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material;
19 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
20 testimony, conversations, or presentations by parties or their counsel that might reveal
21 confidential material.

22 However, the protections conferred by this agreement do not cover information that is
23 in the public domain or, without contravening any portion of this Stipulated Protective Order,
24 becomes part of the public domain through trial or otherwise.

25 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

26 4.1 Basic Principles. A receiving party may use confidential material that is
27 disclosed or produced by another party or by a non-party in connection with this case **only for**

1 **prosecuting, defending, or attempting to settle this litigation.** Confidential material may be
2 disclosed only to the categories of persons and under the conditions described in this
3 agreement. Confidential material must be stored and maintained by a receiving party at a
4 location and in a secure manner that ensures that access is limited to the persons authorized
5 under this agreement.

6 4.2 **Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
7 ordered by the Court or permitted in writing by the designating party, a receiving party may
8 disclose material designated as "CONFIDENTIAL" only to:

9 (a) the receiving party's counsel of record in this action, no more than two
10 pre-designated in-house counsel per party who directly oversee and participate in this case, and
11 employees of counsel of record to whom it is reasonably necessary to disclose the information
12 for this litigation;

13 (b) the officers, directors, and employees of the receiving party to whom
14 disclosure is directly necessary for this litigation;

15 (c) experts and consultants to whom disclosure is reasonably necessary for
16 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
17 (Exhibit A);

18 (d) the Court, Court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication
20 of "CONFIDENTIAL" material, provided that counsel for the party retaining the copy or
21 imaging service instructs the service not to disclose any "CONFIDENTIAL" material to third
22 parties and to immediately return all originals and copies of any "CONFIDENTIAL" material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
25 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court.
26 Pages of transcribed deposition testimony or exhibits to depositions that reveal, refer to,
27

1 describe, or otherwise disclose "CONFIDENTIAL" material must be separately bound by the
2 court reporter and may not be disclosed to anyone except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or
6 referencing such material in court filings, the filing party shall confer with the designating party
7 to determine whether the designating party will remove the confidential designation, whether
8 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
9 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
10 standards that will be applied when a party seeks permission from the court to file material
11 under seal.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
14 party or non-party that designates information or items for protection under this agreement
15 must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The designating party must designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify, so that other
18 portions of the material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited unless discussed and
21 agreed to by the Parties in advance. Designations that are shown to be clearly unjustified or
22 that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case
23 development process or to impose unnecessary expenses and burdens on other parties) expose
24 the designating party to sanctions.

25 If it comes to a designating party's attention that information or items that it designated
26 for protection do not qualify for protection, the designating party must promptly notify all other
27 parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies
3 for protection under this agreement must be clearly so designated before or when the material is
4 disclosed or produced.

5 (a) Information in documentary form: (e.g., paper or electronic documents
6 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), the designating party must affix the term “CONFIDENTIAL” to each page that
8 contains confidential material. If only a portion or portions of the material on a page qualifies
9 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
10 making appropriate markings in the margins).

11 (b) Testimony given in deposition or in other pretrial or trial proceedings:
12 the parties must identify on the record, during the deposition, hearing, or other proceeding, all
13 protected testimony, without prejudice to their right to so designate other testimony after
14 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
15 deposition transcript, designate portions of the transcript, or exhibits thereto, as
16 “CONFIDENTIAL.” If a party or non-party desires to protect confidential information at trial,
17 the issue should be addressed during the pre-trial conference.

18 (c) Other tangible items: the producing party must affix in a prominent place
19 on the exterior of the container or containers in which the information or item is stored the term
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
21 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

22 5.3 “Attorneys’ Eyes’ Only.” The parties shall have the right to further designate
23 Confidential Material or portions thereof as “ATTORNEYS’ EYES ONLY.” This designation
24 may be made upon a good faith belief that such Confidential Material contains one or more of
25 the following:

26 (a) highly sensitive personal information (e.g., personal tax returns or
27 medical information);

1 (b) highly confidential trade secrets related to Microsoft's global piracy
2 enforcement efforts unrelated to this lawsuit; or

3 (c) highly confidential trade secrets relating to research, development,
4 pricing, regulatory, or commercial information, the disclosure of which to any employee,
5 officer, director, consultant, contractor, subcontractor, or shareholder of any other party or any
6 of its affiliates would create a risk of significant injury to the designating party's business.

7 Disclosure of such Confidential Material designated as "ATTORNEYS' EYES ONLY"
8 shall be limited to the persons designated in, and in accordance with, Section 4.2, subsections
9 (a), (c), (d), (e), (f), and (g). All other provisions herein applicable to Confidential Material
10 shall be applicable to Confidential Material designated as "ATTORNEYS' EYES ONLY"
11 under this Section 5.3.

12 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the designating party's
14 right to secure protection under this agreement for such material. Upon timely correction of a
15 designation, the receiving party must make reasonable efforts to ensure that the material is
16 treated in accordance with the provisions of this agreement.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
19 confidentiality, including "ATTORNEYS' EYES ONLY," at any time. Unless a prompt
20 challenge to a designating party's confidentiality designation is necessary to avoid foreseeable,
21 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of
22 the litigation, a party does not waive its right to challenge a confidentiality designation by
23 electing not to mount a challenge promptly after the original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding
26 confidential designations or for a protective order must include a certification, in the motion or
27 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer

conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- (a) promptly notify the designating party in writing and include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
2 protected material, (c) inform the person or persons to whom unauthorized disclosures were
3 made of all the terms of this agreement, and (d) request that such person or persons execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a producing party gives notice to receiving parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
10 provision is not intended to modify whatever procedure may be established in an e-discovery
11 order or agreement that provides for production without prior privilege review. Parties shall
12 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all appeals, each receiving
15 party must return all Confidential Material to the producing party, including all copies, extracts
16 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
17 destruction. Notwithstanding the requirements of this paragraph, however, a party’s outside
18 counsel of record is not required to delete copies of “CONFIDENTIAL” or “ATTORNEYS’
19 EYES ONLY” material that may reside on their respective firm’s email archive or electronic
20 back-up systems. In addition, , each party’s counsel of record is entitled to retain one archival
21 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
22 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
23 consultant and expert work product, even if such material contains confidential material.

24 The confidentiality obligations imposed by this agreement shall remain in effect until a
25 designating party agrees otherwise in writing or a court orders otherwise.

26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

27 DATED this 30th day of December, 2017.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
any documents in this proceeding shall not, for the purposes of this proceeding or any other
proceeding in any other court, constitute a waiver by the producing party of any privilege

1 applicable to those documents, including the attorney-client privilege, attorney work-product
2 protection, or any other privilege or protection recognized by law.

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4 DATED this 1st day of December 2017.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of

4 _____ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Western District of
7 Washington on _____ [date] in the case of *Microsoft Corp. v. The Software King, et*
8 *al.*, No. 2:16-cv-01899-RSM. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 will not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of this
13 Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17
18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____